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FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT

HOUSTON

FILE NO. 120-83

REPORT MADE AT HOUSTON, TEXAS	DATE WHEN MADE 6-24-48	PERIOD FOR WHICH MADE 6-24-48	REPORT MADE BY WILLARD BOONE ep
TITLE COLLIS P. SUDERMAN -vs- UNITED STATES Civil Action No. 676, United States District Court, Southern District of Texas			CHARACTER OF CASE FEDERAL TORT CLAIMS ACT

SYNOPSIS OF FACTS:

On 4-1-48 civil suit filed by Plaintiff against the United States in U. S. District Court, Southern District of Texas, for damages of \$214,240.00 alleging total and permanent disability as a result of the explosion of the SS Grandcamp at Texas City, Texas on 4-16-47. Plaintiff's petition alleges the negligent acts and omissions of the officers, agents, employees, and servants of the United States were the proximate cause of the explosion at Texas City and Plaintiff's damages. Government's answer filed 6-17-48 containing motions to dismiss, general and special denials, and alleging contributory negligence on the part of Plaintiff and intervening acts of negligence by other parties were the proximate cause of Plaintiff's damages.

-P*-

APPROVED AND
FORWARDED:

SPECIAL AGENT
IN CHARGE

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- 1 - SAAG GEORGE O'B. JOHN
- 2 - Houston

EX-3

COPY IN FILE

DETAILS:

This investigation is predicated upon a letter from the Honorable BRIAN S. ODEM, United States Attorney for the Southern District of Texas, Houston, Texas, dated January 30, 1948, requesting that an investigation be conducted as to the civil suits filed against the United States Government arising out of the Texas City Disaster which occurred on April 16, 17, 1947.

INTRODUCTION

As set forth in the report of Special Agent JAMES A. FINLEY, dated April 24, 1948 at Houston, Texas in case entitled THE TEXAS CITY TERMINAL RAILWAY COMPANY -vs- UNITED STATES, CIVIL DOCKET #CA-535, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS; FEDERAL TORT CLAIMS ACT, at 9:12 A.M. on April 16, 1947, the SS Grandcamp, a vessel of French registry, which was moored at Pier "O" at Texas City, Texas, exploded causing widespread destruction and loss of life. This vessel was being loaded with Fertilizer Grade Ammonium Nitrate (hereinafter referred to as FGAN) and at the time of the explosion approximately 2,300 tons of FGAN had been loaded into Holds Two and Four. It is this material which allegedly exploded at Texas City.

At approximately 8:00 A.M. on April 16, 1947, nineteen longshoremen boarded the SS Grandcamp and opened the hatches at which time no fire was noted. About ten minutes later, smoke was discovered in the No. Four deep hold. Efforts were made by the longshoremen to extinguish the fire with jugs of drinking water without success and the longshoremen called for a fire hose to be lowered into the hold. This was done but before water was applied to the blaze, orders were issued to remove the hose, batten the hatches, and apply steam to the hold in an attempt to smother the blaze and avoid cargo damage. The longshoremen were ordered off the ship and the Texas City Fire Department was summoned for the purpose of extinguishing the fire. The fire steadily increased in intensity and, as mentioned above, the ship exploded at approximately 9:12 A.M. on April 16, 1947.

The SS High Flyer, a vessel of American registry owned by Lykes Brothers Steamship Company, was also moored in the immediate vicinity, and this ship contained a cargo of approximately 960 tons of FGAN in Hold No. 3. Other materials, including sulphur, were also loaded aboard the SS High Flyer. After the explosion of the SS Grandcamp, which blew away the hatch covers of the SS High Flyer, no fire was observed aboard the latter ship for several hours. The SS High Flyer exploded at approximately 1:10 A.M. on April 17, 1947 with little loss of life but great property damage.

Investigation has shown that the FGAN involved at Texas City was manufactured at United States Government facilities of the Nebraska Ordnance Plant, Fremont, Nebraska; Cornhusker Ordnance Plant, Grand Island, Nebraska; and Iowa Ordnance Plant, Burlington, Iowa, all operated by the Emergency Export Corporation, a subsidiary of the Spencer Chemical Company, Kansas City, Missouri, on a cost-plus contract with the United States Government. The FGAN was being manufactured for the Government which sold it to Lion Oil Company, Eldorado, Arkansas, in accordance with the provisions of a replacement contract entered into in July, 1946. Shipment of the material was on Government Bills of Lading from the respective Ordnance Plants to Texas City. A sales contract existed between the Lion Oil Company and the Walsen Consolidated Mercantile Company, New York City, through which the latter company sought to acquire title to the FGAN on behalf of the French Supply Council. Technical examinations of control samples of the FGAN involved in the explosion at Texas City have shown that the material conformed to specifications with very minor deviations.

INITIAL LEGAL PROCEEDINGS

The records of the United States District Court Clerk's Office, Galveston, Texas, reflect that on April 1, 1948, civil suit against the United States was filed by COLLIS P. SUDERMAN, through the law firm of Levy and Levy, Galveston, Texas, for damages of \$214,240.00 alleging total and permanent disability by reason of personal injuries received by him as a result of the explosion of the SS Grandcamp at Texas City, Texas. The petition states this action was brought under the Federal Tort Claims Act.

1. Summary of Plaintiff's Petition:

The petition alleges briefly as follows: Plaintiff is a resident of Galveston County, Texas. On and prior to April 16, 1947, Plaintiff was a strong and healthy man, with a life expectancy of 24.54 years, and was employed as Outside Superintendent for the A. D. Suderman Stevedoring Company, earning an average of \$6,000.00 per annum. On the morning of April 16, 1947, Plaintiff was engaged in the course of his employment and was supervising the loading of cargo into the holds of the SS Grandcamp. A fire in this cargo, consisting of a certain dangerous and explosive material, was followed by an explosion of the cargo and Plaintiff was seriously injured, resulting in the amputation of his left leg and numerous other injuries, which have rendered him permanently and totally disabled from earning a livelihood.

The petition charges that Defendant manufactured at one or more of its Ordnance Plants, a chemical compound which Defendant knew or should have known in the exercise of ordinary care was an imminently and inherently dangerous commodity. As manufacturer, seller, and shipper Defendant had the duty to give proper warning of the dangers involved and to give adequate fire-fighting instructions, and Defendant failed to execute these requirements. The Court is requested to take judicial notice of the public disaster at Texas City, Texas.

The petition alleges the injuries to Plaintiff were proximately caused by the negligent acts and omissions of the officers, agents, servants and employees of the United States of America, and particularly the wrongful acts and omissions of the Commanding Officer of the United States Army Ordnance Department, and his subordinate and superior officers and his and their agents, servants and employees.

The petition alleges as acts of negligence on the part of the United States of America the following:

1. Manufacturing a material which was combustible, unstable, highly explosive and inherently dangerous, knowing same would be shipped by common carrier and handled by persons who had no knowledge of its dangerous nature.
2. Improperly manufacturing a material consisting of ammonium nitrate in such manner as would tend to make it more dangerous.
3. Mislabeling and deceptively labeling this material as "Fertilizer".
4. Packaging said material in paper bags tending to render the contents still more explosive and dangerous.
5. Coating one or more plies of the bag with a highly inflammable substance.
6. Shipping said material so packaged and mislabeled by common carrier to Texas City to be loaded on vessels, knowing such material was exceedingly dangerous and explosive.
7. Wholly failing to give warning of the dangerous nature of the material.
8. Wholly failing to give warning to Plaintiff of the dangerous nature of the material.
9. Causing approximately 2,300 tons of such dangerous and mislabeled material to be loaded on the SS Grandcamp which material exploded.
10. Manufacturing a chemical compound, the ingredients of which are not known to Plaintiff, but are well known to Defendant, which was inherently dangerous, with knowledge that same would be shipped via common carrier and handled by persons who did not know the character of the product; and that Defendant failed to give warning to persons handling same or who would be in the vicinity thereof.

2. Summary of Government's Answer:

On June 12, 1948, the Government's answer was filed by BRIAN S. ODEM, United States Attorney for the Southern District of Texas, and GEORGE O'BRIEN JOHN, Special Assistant to the Attorney General, which is summarized briefly as follows:

- First defense: Plea for more definite statement.
- Second defense: Motion to dismiss for failure to state a claim.
- Third defense: Motion to dismiss on grounds of failure to show that the laws of the place where the alleged acts of negligence and omissions occurred would permit recovery, and failure to show where such acts occurred and identity of persons committing them.
- Fourth defense: Motion to dismiss on grounds Plaintiff is not a resident and the acts and omissions complained of did not occur in this district.
- Fifth defense: Plaintiff is not real party in interest.
- Sixth defense: Answer on Merits:
- a. Admissions
Defendant admits employment of Plaintiff by A. D. Suderman Stevedoring Company.
Defendant admits ammonium nitrate fertilizer was compounded under a cost-plus-fixed-fee contract.
 - b. General denials to all other allegations.
 - c. Special denials
Defendant specially denies any wrongful or negligent acts or omissions on the part of Defendant's agents, officers, etc.
Defendant denies that a cause of action exists and that this Court has jurisdiction.
Defendant specially denies the cargo of the SS Grandcamp was explosive and dangerous material.
Defendant specially denies it had any species of control over the shipping and storing of FGAN.
Defendant specially denies FGAN was inherently and imminently dangerous.
Defendant specially denies, Plaintiff was damaged in the amount claimed.

- Seventh defense: Denial that acts of negligence or omissions on the part of Defendant's officers, agents, employees or servants occurred, but that if same did occur, such acts were performed while exercising due care; or in the alternative said claim is exempt from operation of the FTCA because acts were performed in exercise of discretionary functions or duties.
- Eighth defense: Specific denial that any act of negligence or omission occurred, but if any such act did occur and constituted negligence, it was not the proximate cause of the alleged damage.
- Ninth defense: Alleged damages were the result of unavoidable accident.

~~Tenth~~ defense: Denial that any acts of negligence or omissions on the part of Defendant's officers, agents, etc., occurred but that if such acts did occur, they were not the proximate cause of the alleged injury. Alleges intervening acts of negligence on the part of others which were the direct, sole, exclusive and proximate cause of the fire and explosion aboard the SS Grandcamp and resulting damage, as follows:

A. Republic of France or the Compagnie Generale Transatlantique through their agents, employees, officers and servants:

1. Use of improper dunnage.
2. Failure to clean and inspect cargo holds
3. Permitting loading without inspection.
4. Failure to require proper rebagging of broken sacks.
5. Failure to properly inspect loading operations.
6. Failure to enforce non-smoking regulations.
7. Failure to employ proper fire-fighting methods in Hold No. 4 of the SS Grandcamp.
8. Failure to maintain guards aboard said ship.
9. Failure to post "no smoking" signs in English.

B. A. D. Suderman Stevedoring Company, a partnership, employed by Agents of the Compagnie Generale Transatlantique:

1. Commencing loading operations before receiving a report from the Underwriter's inspector.
2. Permitting promiscuous smoking on the deck and in the hold of the SS Grandcamp by longshoremen.
3. Failure to enforce smoking regulations.
4. Permitting longshoremen to load broken bags of FGAN.
5. Failure to have broken bags of FGAN rebagged.
6. Permitting improper disposal of torn FGAN sacks.
7. Failure to employ proper fire-fighting methods in Hold No. 4 of the SS Grandcamp.

8. Directing use of steam instead of water to extinguish fire in Hold No. 4 of the SS Grandcamp.
9. Ordering No. 4 Hatch battened down, resulting in inordinate increase of temperature.

C. Members of International Longshoremen's Union, Local 636:

1. Promiscuous smoking on deck and in holds of said vessel.
2. Smoking aboard said vessel in violation of regulations including those promulgated by their national organization.
3. Improper disposal of paper bags and loose FGAN.
4. Failure to rebag broken sacks of FGAN.
5. Improper loading of broken sacks of FGAN.
6. Failure to apply a sufficient quantity of water in Hold No. 4.

D. Lykes Brothers Steamship Company, through its agents, officers, employees and servants with respect to the SS High Flyer:

1. Failure to remove the SS High Flyer from the danger zone.
2. Failure to maintain machinery of the SS High Flyer in proper working condition.
3. Failure to attempt repairs on the SS High Flyer upon discovery of fire aboard the SS Grandcamp..
4. Failure to employ tugs to move the SS High Flyer upon discovery of fire on the SS Grandcamp..
5. Failure to employ tugs to move the SS High Flyer after the explosion.
6. Permitting the SS High Flyer to be abandoned.
7. Failure to maintain personnel to man fire equipment.
8. Permitting fire to start after SS High Flyer abandoned.
9. Failure to reboard the SS High Flyer to extinguish fire.
10. Failure to move SS High Flyer after discovery of fire.
11. Failure to take precautions to prevent explosion of SS High Flyer
12. Failure to exercise the administrative duty of Port Captain which by custom had been exercised by Lykes Brothers Steamship Company as to the general care and protection of the harbor area.

E. Texas City Terminal Railway Company with respect to fire and explosion aboard both ships.

1. Failure to enforce municipal ordinances.
2. Failure to enforce smoking regulations in warehouse and Pier "O".
3. Failure to maintain fire-fighting equipment and personnel.
4. Failure to maintain adequate guard system in dock area.
5. Failure to have fixed responsibility for administration of the port area.
6. Failure to effect the moving of the SS Grandcamp after discovery of the fire.
7. Failure to effect moving of the SS High Flyer.
8. Failure to warn individuals of the material and cargo aboard the SS High Flyer after the explosion on the SS Grandcamp.

F. Texas City, Texas - A Municipal Corporation, through its agents, officers, employees and servants with respect to both ships.

1. Failure to enforce governmental functions and authority over port and harbor facilities.
2. Failure to maintain a Captain of the Port.

The answer alleges that the above acts of negligence constituted new and independent causes which could not be reasonably foreseen by the Defendant and that even though the Defendant was guilty of acts of negligence, which is denied, such acts were not the direct or proximate cause of Plaintiff's damage but were remote acts totally unconnected with the acts of negligence of the parties alleged above.

Eleventh defense: Defendant alleges that if it was guilty of negligent acts, which is denied, Plaintiff is guilty of contributory negligence as described above in acts attributed to the A. D. Suderman Company, and that had Plaintiff not committed these acts of negligence the catastrophe at Texas City would not have occurred.

P E N D I N G I N A C T I V E

LEADS

THE HOUSTON DIVISION

AT GALVESTON, TEXAS

Will follow and report action of the United States District Court in this matter. It will be noted that at the present time, it is believed this case will not be adjudicated prior to January, 1949. In the interim, this case is being placed in a pending inactive status.

January 15, 1952

40-1

Honorable Erian S. Odem
United States Attorney
Post Office Building
Houston, Texas

RE: COLLIS P. SUDIRMAN, et al -vs- UNITED
STATES, CIVIL ACTION 676, UNITED
STATES DISTRICT COURT, SOUTHERN DISTRICT
OF TEXAS, FEDERAL TORT CLAIMS ACT

Dear Mr. Odem:

Enclosed, herewith, is a report of Special Agent Robert L. Whitmarsh, dated January 15, 1952, at Houston, regarding the above captioned matter. You have been previously furnished a report on this suit dated December 29, 1951.

This letter is to call to your attention that no further investigation is contemplated unless requested by your office.

I would appreciate your communicating with me should you desire any further investigation.

Very truly yours,

A. F. LORTON, JR.
Special Agent In Charge

Enclosures

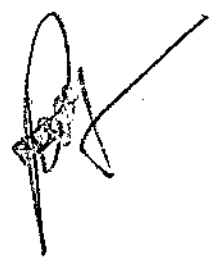
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621 Esperson Building
Houston, Texas

December 29, 1951

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Honorable Brian S. Odem
United States Attorney
Southern District of Texas
U. S. Post Office Building
Houston, Texas

Re: COLLIS P. SUDERMAN; TEXAS EMPLOYERS
INSURANCE ASSOCIATION -vs- UNITED
STATES, Civil Action 676, United
States District Court, Southern
District of Texas.

Dear Mr. Odem:

Reference is made to the attached report of Special Agent FRANK BALES dated December 29, 1951, at Houston, Texas. You have previously been furnished a report by Special Agent Bales dated June 22, 1951, at Houston, Texas, and a report of Special Agent WILLARD BOONE dated June 24, 1948, at Houston, Texas.

This letter is to advise you that no further investigation is contemplated in this matter by this office, unless specified by you, with the exception of reporting any information contained in the Texas Employers Insurance Association's records, when released by the Plaintiff's attorney, ADRIAN LEVY, JR.

Should you desire further inquiry, I would appreciate your communicating with me.

Very truly yours,

A. F. Lorton, Jr.,
Special Agent in Charge.

Enclosure.

FMH

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FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT **HOUSTON**

FILE NO.

REPORT MADE AT HOUSTON	DATE WHEN MADE 1-15-52	PERIOD FOR WHICH MADE 12-28-51; 1-10-52	REPORT MADE BY ROBERT L. WHITMARSH hj
CHANGED TITLE COLLIS P. SUDERMAN, aka Carlos Suderman, "Pete" Suderman; TEXAS EMPLOYERS INSURANCE ASSOCIATION -vs- UNITED STATES, CIVIL ACTION 676, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS			CHARACTER OF CASE FEDERAL TORT CLAIMS ACT
<p>SYNOPSIS OF FACTS:</p> <p style="text-align: center;">TEXAS EMPLOYERS INSURANCE ASSOCIATION, with permission of Plaintiff SUDERMAN's attorneys, made available medical reports relating to SUDERMAN as prepared by Drs. W. J. JINKINS, SR. and C. S. SYKES. Report of Dr. JINKINS states that plaintiff has ninety per cent total permanent disability.</p> <p style="text-align: center;">- P* -</p> <p>DETAILS:</p> <p>The title of this report is being marked "Changed" to add the name of CARLOS SUDERMAN, by which name the plaintiff is known in medical reports made by Dr. SYKES, and the nickname of "PETE" SUDERMAN, by which name Plaintiff SUDERMAN was known by friends.</p> <p>On December 28, 1951, Mr. E. J. HOLLAND, JR., Claims Manager, TEXAS EMPLOYERS INSURANCE ASSOCIATION, 2502 Fannin Street, Houston, Texas, made available to the writer copies of medical reports relating to Plaintiff SUDERMAN. Mr. HOLLAND advised that these reports were being made available with the express permission of ADRIAN LEVY, JR., the plaintiff's attorney.</p>			
APPROVED AND FORWARDED: <i>A. J. Eaton, Jr.</i>		SPECIAL AGENT IN CHARGE	
COPIES OF THIS REPORT 3 - Bureau 2 - USA, Houston (Enc. by messenger) 2 - Houston (120-83) <div style="font-size: 2em; font-weight: bold; margin-top: 10px;">COPY IN FILE</div>		<div style="text-align: center; font-size: 1.5em;">120-83-4</div> <div style="text-align: right; font-size: 1.5em; font-weight: bold;">SE 40</div> <div style="text-align: right; font-weight: bold;">RECORDED - 42 EX-130</div>	

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HO 120-83

These medical reports made available by Mr. HOLLAND are quoted verbatim, as follows:

"July 14, 1947

RE: C. P. SUDERMAN

Injured: April 16, 1947.

"Texas Employers' Insurance Association
206 Merimax Building
Galveston, Texas

"Gentlemen:

"This man was injured on April 16, 1947 at the Texas City explosion while at work on the "Grand Camp." He was taken to the St. Mary's Infirmary and at that time it was ascertained that he had compound fracture of the right femur. The tissues of the left lower leg were badly macerated. He had multiple bruises about the body, arms, and face and several small lacerations.

"The patient's right leg was put in skeletal traction with a kirchner wire through the right tibia. A cast was applied to the left leg and he received plasma and several blood transfusions to combat shock. Penicillin and sulfadiazine were given. The left leg became gangrenous below the knee with a wet type of gangrene which began spreading upward. At the junction of the medial and lower third of the left femur an amputation was performed of the guillotine type and the skin traction was applied to the stump. The skin of the left thigh was bruised badly posterior and part of it sloughed out. At a later date a revision of the stump was done and about $1\frac{1}{2}$ " more of the left femur was amputated.

HO 120-83

At the fracture site of the right femur an area 3" in diameter of the skin became macerated and sloughed out. It was apparent that the muscle underlying this macerated skin was completely fibrosed and atrophied; until at the present time there is probably only a fibrous band connecting the upper muscle to the patella. The abraded skin has sloughed out and is now almost healed on the right mid thigh anteriorly. The stump of the left leg is almost completely closed and there is no drainage. Patient is at home wearing a right walking clipper brace; however, he is not able to be out of bed and the fracture of the right femur has healed only partly and its position is with the ends of bone slightly overlapping and only moderate amount of callous formation. Further work is contemplated upon this man's right femur, as it is felt that this union at the fracture site is not adequate to support weight and probably will not; however, Dr. G. W. N. EGGERS has been seeing him for this fracture and you can get a report on this from him, I suppose.

"Yours very truly,

/s/ W. J. JINKINS, JR., M.D.

"WJJ-JR/emb."

"DRS. JINKINS & JINKINS
PHYSICIANS AND SURGEONS
Medical Bldg. Inc.

"Galveston, Texas
October 8, 1947

HO 120-83

"Re: Mr. C. P. SUDERMAN

"Texas Employers' Insurance Association
206 Merimax Building
Galveston, Texas

"Attention: Mr. E. J. HOLLAND, JR.

"Gentlemen:

"At the present time this patient's stump of his left leg has completely healed. There is, however, a painful scar posteriorly and it may require removing at a later date. The fracture of the right femur is healing satisfactorily and the patient is in a wheel chair with a leg brace; however, he is not bearing weight on the right leg as yet. It is felt that in the near future that he will start weight bearing. There is considerable muscle atrophy of the right quadriceps with fibrous tissue replacements at the point of injury of his right thigh.

"This patient should reach his maximum improvement within the next three months.

"Yours very truly,

/s/ W. J. JINKINS, JR., M.D.

"WJJ-JR/emb."

"C. S. SYKES, M.D.
United States National Bank Bldg.
Galveston, Texas

"March 11th, 1948

HO 120-83

"Texas Employers Insurance Ass'n.,
Merimax Building,
Galveston, Texas

"Gentlemen:

"Mr. CARLOS SUDERMAN was seen for the first time on April 23rd, 1947 at the St. Mary's Infirmary because of deafness and running right ear. He had been injured in the Texas City blast on April 16,th, 1947.

"Findings were: Considerable dirt in the right external canal mixed with mush pus. After cleansing a very large perforation was seen in the drum through which pus was flowing. There was no evidence of injury to the left drum but the hearing in that ear was impaired because of the intensity of the blast. Since that time the condition of the ears has improved. Infection in the right ear has completely cleared up but there remains a large perforation in the drum. The left ear has returned to normal.

"There is at the present time about 50% loss of hearing in the right ear.

"Yours truly,

/s/ C. S. SYKES

"CSS:dh."

"DRS. JINKINS & JINKINS
PHYSICIANS AND SURGEONS
MEDICAL BUILDING, INC.
Galveston, Texas

"March 20, 1948
Re: C. P. SUDERMAN, SR.
3910 - R $\frac{1}{2}$

HO 120-83

"Texas Employers Insurance Association
206 Merimax Building
Galveston, Texas

"Gentlemen:

"On examination or Mr. SUDERMAN at this time, there has been no change in his amputated limb. The right leg is progressing satisfactorily. He can extend the knee 180° and flex it to 110°. There is some binding of the quadriceps muscle on the right at the site of the fracture. He is able to use this leg in a walker but is not able to get around on crutches. The condition of his ears has been reported by the ear specialist. The chest is completely healed.

"It is my opinion that this man has 90% total permanent disability.

"Yours very truly,

/s/ W. J. JINKINS, JR.,
M.D.

"WJJ-JR/emb."

Enclosures to the United States Attorney, Houston, Texas:

Copies of medical reports obtained from Mr. E. J. HOLLAND, JR., Texas Employers Insurance Association.

- PENDING -

HO 120-83

Leads

Houston Division

At Galveston, Texas:

*Will follow and report final adjudication of this case.

Reference

Report of Special Agent FRANK BALES, dated December 29, 1951,
at Houston, Texas.